

Pioneering Domestic Violence Court for Juveniles

ELLEN McCARTHY

When juveniles batter their family members or their dates, should they be charged with assault or with domestic violence?

If they appear in Santa Clara County's Juvenile Delinquency Domestic and Family Violence Court, the charge will likely be the latter. The Superior Court of Santa Clara County is the first court system in the nation to dedicate a special juvenile court to domestic and family violence cases.

Since the new court began operation in April 1999, Judge Eugene M. Hyman has handled more than 120 cases involving juveniles accused of battering or making violent threats against either family members or people with whom they are intimate or have a dating relationship. He says that, of these cases, 60 percent involved family violence, and 40 percent, dating violence.

"We believe that this special domestic violence and family court for juveniles provides both early intervention and rehabilitation," says Judge Hyman, who, with Karen Berlin (now a supervising probation officer), helped establish the innovative court. "Acts of juvenile domestic and family violence warrant immediate and intensive intervention," he explains. "Our primary concerns are victim and community protection as well as offender accountability and rehabilitation."

Before the dedicated domestic violence court existed, minors most often were cited rather than detained, he says. "Now the whole justice system here is taking these cases much more seriously."

COURT-COMMUNITY RESPONSE

In Santa Clara County, juvenile domestic violence is being addressed through a coordinated community response. In addition to the dedicated court, the county provides specialized probation services, juvenile violence prevention/batterer intervention, victim advocacy, referral and support services, and domestic and family violence prevention education for all juvenile offenders.

"This coordinated team response works to the benefit of offenders, victims, and family members," emphasizes Judge Hyman. "Most importantly, it promotes the victim's safety, education, empowerment, and access to appropriate services."

No special resources were needed to set up this special court. "The cases were there," says Judge Hyman. "We saw the need, and we organized a committee comprising district attorneys,

public defenders, probation officials, advocates, court administrators, and others to develop the protocols to ensure a coordinated community response.”

NEW PROTOCOLS

Santa Clara County's probation department has dedicated a team of probation officers to juvenile domestic violence and has developed special protocols for these offenders. "The protocols must be reviewed at least twice a year to ensure that they are consistent with current law and best intervention practices," says Judge Hyman. "Although the law regarding standards for batterer programs does not currently apply to juveniles, the probation department is working collaboratively with community agencies and advocates to develop both standards and a curriculum for juvenile domestic violence programs."

He adds that juvenile offenders must be assessed on a

case-by-case basis. “Some situations, for example, involve mental health issues to which the court must be sensitive.”

According to Judge Hyman:

◆ The Santa Clara County Police Chiefs Association has agreed to apply the county domestic violence law enforcement protocols to juvenile offenders.

◆ The county district attorney's office assigns one attorney to each domestic and family violence case. The attorney follows it from the first court appearance to the last to ensure that the case is treated consistently throughout the process (also known as vertical prosecution).

◆ Juvenile Hall has developed a domestic violence awareness curriculum to present to all minors detained there.

◆ The county public defender's office supports the Juvenile Delinquency Domestic and Family Violence Court.

MEASURING SAFETY

The court received a grant to assist it in collecting statistics, such as how many minors are being referred to juvenile probation for domestic and family violence offenses, the number of referrals resulting in Juvenile Hall custody, the ethnic composition of the offenders, the minors' histories of domestic violence from



Judge Eugene M.
Hyman
Superior Court of
Santa Clara
County

adults in the home, educational accomplishments, the numbers of violations of probation, and the reasons for the violations (new offense, failure to attend the intervention program, failure to attend school, and substance abuse treatment).

"It is too early to assess the full impact," Judge Hyman says. "But we are convinced that our intervention has improved victim safety, which to us is the best definition of success."

● For more information, contact Judge Eugene Hyman, e-mail: ehyman@sct.co.santa-clara.ca.us. ■



Court Aids Family Group Decision Making

ELLEN McCARTHY

A new alternative dispute resolution program for families not only is helping to reduce costly courtroom trials but is transforming the resolution of child custody and child protection cases—with safer, more effective, and more satisfying outcomes for parents and children. Unlike court-based mediation programs, in which court-appointed mediators work with disputing family members to resolve problems created when a child is abused or neglected, the Family Group Decision Making Program brings together family members to resolve their problems with little input from the courts or the government.

Participation in the program is voluntary. Social workers invite the parents of an

abused or neglected child to participate in a group session (some last all day) with extended family members. The social service agency has a budget to identify relatives and bring them to the meeting from hundreds, even thousands, of miles away. Significant persons in the child's life, such as the family pastor and the child's teacher, also may participate. The goal is to develop a permanent plan that protects the child.

The Family Group Decision Making Program originated in New Zealand and was first adopted in California by Santa Clara County, with other counties, including Stanislaus, Santa Cruz, and Los Angeles, following suit.

“The program helps families protect at-risk children, often

without any court intervention," says Los Angeles County Juvenile Court Presiding Judge Terry Friedman. "This cost-effective, child-centered approach is a significant advance in child welfare services."

The program has operated successfully in Los Angeles County on a pilot basis for several years, and plans are under way to expand it throughout the county. Judge Friedman says he is very pleased with the results, and he urges courts in other counties to consider the program, which he says "holds the prospect for better resolving family disputes and for freeing court resources for more serious cases."

Judge Leonard P. Edwards, supervising judge of Santa Clara County's juvenile dependency division, calls the program "sensible and very powerful. We are convinced that almost any problem can be solved by sitting down with the right people and talking about what is best for the child—in other words, more problem solving and less litigation."

Along with other professionals in Santa Clara County, Judge Edwards has given talks and trainings on the program in some 40 states. He recently spoke on this topic to the National Conference of Chief Justices. "Since we started using family group decision making and mediation we have had more than 50 jurisdictions visit us for guidance in how to implement these programs in their own locations." ■



Photo: Jason Doiy



Unifying to Serve Families

Conversation With Judge Donna J. Hitchens



Judge Donna J. Hitchens
Superior Court of
San Francisco
County

Judge Donna J. Hitchens was elected to the bench in 1990 and soon after volunteered to serve in the juvenile court of the Superior Court of San Francisco County. It was during her tenure as a juvenile court judge that she saw the need for a better way to handle a family's multiple legal issues than hearing them in separate courts. A few years later, in December 1997, her commitment to improving the system became a reality as she helped to unify the county's juvenile and family courts into one family court.

As presiding judge of the unified family court, Judge Hitchens hears a wide range of cases affecting families, including adoption, domestic violence, delinquency, dependency, and child custody cases. Recognizing her abilities and her commitment to the improvement of judicial administration, Chief Justice Ronald M. George appointed her to the Judicial Council in 1999. She currently serves as the council's liaison to the Family and Juvenile Law Advisory Committee, which is studying court coordination of proceedings involving families and children.

Court News recently visited Judge Hitchens's chambers to discuss family courts and how they serve families.

When did you get involved in family court?

Roughly six months after I became a judge, I volunteered to supervise the juvenile court,

Can you compare how families and children are served by the courts today, since integrating the family court with the juvenile court?

Our system has changed considerably and continues to be an evolving process. We have become more effective at utilizing community resources and treatment programs to serve the whole family. Previously, there were sets of resources that were designated for either family or juvenile court participants. We have been successful at integrating those and making people

We are seeing increasing numbers of pro per litigants because many people cannot afford attorneys. The court is being called upon to provide much greater services to pro per litigants and must constantly meet the requirement to serve without becoming the advocate for the litigant.

aware that those opportunities exist, including developing a resource manual that explains to litigants the options available.

In addition, we have been able to move toward a one family, one judge system. Now when a family initially comes into the system, it remains with the same judge if there is further litigation. One judge stays with that family for all related court matters, whether the family's child is arrested or the parents seek a divorce.

To institute this system, we have cross-trained both staff and judicial officers. Court staff also

seen an increase in lesbian and gay parents, as well as children who are living with extended family members.

We are also seeing increasing numbers of pro per litigants because many people cannot afford attorneys. The court is being called upon to provide much greater services to pro per litigants and must constantly meet the requirement to serve without becoming the advocate for the litigant. To help address this situation, we are in the process of setting up a self-help center in addition to our family law facilitator's office. It will assist pro

pers in filling out papers, train them in the role of the family court and the judges involved, and provide referrals to community resources. These community resources include alcohol treatment, substance abuse, domestic violence, and batterer programs, as well as children's services and parenting training.

What are the biggest challenges facing unified family courts? How can these challenges be met?

There are three areas that present our biggest challenges in our family court system.

First, we face the challenge of integrating various computer systems. Colleagues in other counties are facing the same problem because traditionally the civil, criminal, juvenile, and family divisions all had their own computer systems. Identifying the cases that overlap is often very difficult with the current system. For example, we might be unaware that the criminal court

Everything we do as a court affects several other organizations, including the public defender's office, district attorney's office, and county counsel.

has delivered a stay-away order as someone is appearing in our court in a child custody case.

Second, the statutory and procedural scheme is set up to deal with these cases in very different manners. For example, none of the federal money devoted to supporting a child support commissioner can be used to support a judge, only a commissioner. We are looking at ways to cope with these procedures to stay within the federal

guidelines but also achieve a true unified family court.

Third, it is a constant challenge to achieve our goals with our current resources; we have a need for more judicial officers and staff to support our efforts. For instance, I would like to have a case manager who would review the family's history, locate resources that could assist the family and help keep it together, and help us identify cases that could be integrated.

What can courts do to coordinate these cases?

First of all, I feel that unifying our courts here in San Francisco has been enormously beneficial to our service to the public. However, the ability to do this varies in every county, especially in large counties with multiple courthouses. Counties need to explore what the possibilities are with the resources available.

The commitment of the judicial officers is very important.

I have been very lucky because everyone in our unified family court supports the system and wants to be here. It is also important to realize that it is a slow implementation and does not happen overnight. Everything we do as a court affects several other organizations, including the public defender's office, district attorney's office, and county counsel. We have done a lot of outreach to affected agencies to include them in the development process.

How do California family courts compare with those of other states? Are other states using the unified family court model?

California has taken on this issue as a priority and is ahead of most other jurisdictions in unifying family courts. However, there are other states that have moved to a unified family court model and seem pleased with the results. In fact, some states are looking to make legislative

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where I heard dependency and delinquency cases for about four years. I then spent a short time presiding over civil and criminal proceedings. But it became apparent when I worked in the juvenile court that our system was somewhat dysfunctional in the way we addressed families. There was so much overlap of what happened in family court and what was going on in juvenile court that there were artificial distinctions between the two on how we were addressing the needs of families. So, after being away from juvenile court for a few years, I decided to look at unifying the juvenile and family courts. I volunteered to take family court assignments for about six months before integrating the family and juvenile courts into one unified family court.

share information and training programs. For example, if we are conducting a program on parental alienation or the effects of domestic violence on children, we include everyone in the process, from bench officers to the attorneys. In this manner, all the players learn how these issues affect families, regardless of where they appear in the system.

These changes have led to more efficient use of resources. We have even begun to see fewer court appearances because all of the family's legal issues can be dealt with in one session.

Have the types of families and family members you see in your court changed in recent years?

There is a great deal of diversity in the families we see. We have

changes and develop a unified family code. The topic of unified family courts is certainly being discussed, and there seems to be great interest among the judiciary. For example, the National Association of Women Judges is doing a program on the subject of unified family courts at its annual conference in October. ■

The Relationship Between the One-Strike and Three-Strikes Laws

JUDGE J. RICHARD COUZENS
SUPERIOR COURT OF PLACER
COUNTY

Penal Code section 667.61, commonly known as the one-strike law, provides for enhanced punishment for specified violent sex offenses. Because the one-strike law specifies a life term with a minimum parole eligibility of 15 or 25 years, the early one-strike cases were caught up in the dispute concerning the proper interaction between the three-strikes law and any crime that did not have a specified minimum term.

The first case to discuss this issue was *People v. Ervin* (1996) 50 Cal.App.4th 259 (disapproved on other grounds in *People v. Fuhrman* (1997) 16 Cal.4th 930). *Ervin* suggested that the one-strike and three-strikes laws work cumulatively, not alternatively. Accordingly, a defendant prosecuted for a violent sex crime with one prior strike, normally punishable by a term of life with a parole period of 15 years, should have a second-strike term of life with a 30-year parole eligibility.

Similarly, *People v. Davis* (1999) 71 Cal.App.4th 1492 and *People v. Cornelius* (2000) 79 Cal.App.4th 771 applied the two statutes cumulatively in third-strike sentencing situations. In each case the courts held that the defendant, who normally would have received a life term with a 25-year parole period, properly received a life term with a 75-year parole period because of the two prior strikes. However, the Supreme Court has granted review of *Davis*.

Two recent cases have defined the relationship between the two statutes by referring to the unique provisions of section 667.61(f) of the one-strike law. Subsection (f), in relevant part, provides: "If only the *minimum number* of circumstances specified in [the one-strike law] have been pled and proved, . . . those circumstances shall be used as the basis for imposing the term [under the one-strike law] rather than being used to impose the punishment under any other law, unless another law provides for a greater penalty. However, if any *additional . . . circumstances* . . . have been pled and proved, the minimum number of circumstances shall be used for imposing [a one-strike sentence], and any other additional circumstance . . . shall be used to impose punishment or enhancement under any other law." (Emphasis added.)

People v. Acosta (2000) 80 Cal.App.4th 714 held that a defendant convicted of a violent sex offense with two prior violent sex convictions was properly sentenced under both the one-strike and three-strikes

laws. The court found that the proper sentence was a base term of life with a minimum parole period of 50 years. Utilizing the language of section 667.61(f), the court first used one of the prior convictions to bring the defendant under the one-strike law. It then used the other prior to impose a second-strike sentence under the three-strikes law. The court held that the same prior conviction may not be used

strike under the three-strikes law) plus one five-year enhancement under section 667(a).

Generally in accord with *Acosta* is *People v. Graves* (2000) 80 Cal.App.4th 1336. The defendant was convicted of committing a lewd act on a child in violation of Penal Code section 288(a), with a prior conviction for the same offense. The defendant was sentenced under the one-strike law solely because of



under both the one-strike law and the three-strikes law. The court also concluded that the prior conviction could not be used under the one-strike or three-strikes law *and* as a serious felony under section 667(a). In sum, the proper sentence was life with a parole period of 25 years (thus “burning up” one of the prior crimes under the one-strike law) plus another 25 years (using the other prior conviction as a

the prior sex crime conviction. Because of the limitations of section 667.61(f), the court held that the defendant could be punished only under the one-strike law; the prior could not also be used under the three-strikes law.

The foregoing decisions, together with the Supreme Court's decision in *People v. Jefferson* (1999) 21 Cal.4th 86, stand for the following general sentencing principles:

▼ If a defendant is convicted of a violent sex offense and is being brought under the one-strike law solely because of a single violent sex prior, the defendant may be punished only under the one-strike law unless, under the circumstances, some other applicable statute provides for greater punishment. Under these circumstances the prior sex crime may not be used as a strike under the three-strikes law or as a prior serious felony under the enhancement provisions of section 667(a).

▼ If the defendant has more than one violent sex prior or has more than one circumstance bringing him within the one-strike law, the court must use one of the priors or allegations to apply the one-strike law and the other priors to impose any other punishment, including the three-strikes law and the prior serious felony enhancement under section 667(a).

▼ The court is free to “allocate” the allegations so as to maximize a defendant’s punishment. In other words, a court may use a factual circumstance under section 667.61(a), such as infliction of torture, to impose the one-strike sentence, then use any prior serious or violent felonies for the application of second- or third-strike sentencing under the three-strikes law. ■



Judge J. Richard
Couzens

Judge Couzens is a former member of the Judicial Council and past chair of its Criminal Law Advisory Committee.

Projects to Study Children's Needs

Through its Research Grant Program, the Center for Families, Children & the Courts has awarded \$35,000 to each of three new interdisciplinary projects. The projects will apply expertise in social science and law to a review of current research literature about the specific needs of children and families. They share the goal of deriving from the literature implications for court practices that affect children and families. Each project is scheduled to develop a report summarizing its work by June 2001. Descriptions of the projects follow.

Project: *Educational Needs of Children Involved in Family and Juvenile Court Proceedings*

Organization: Mental Health Advocacy Service, Inc.

Investigators: Lois Weinberg, Ph.D.; Nancy Shea, J.D.; Andrea Zetlin, Ed.D.; Jan Costello, J.D.

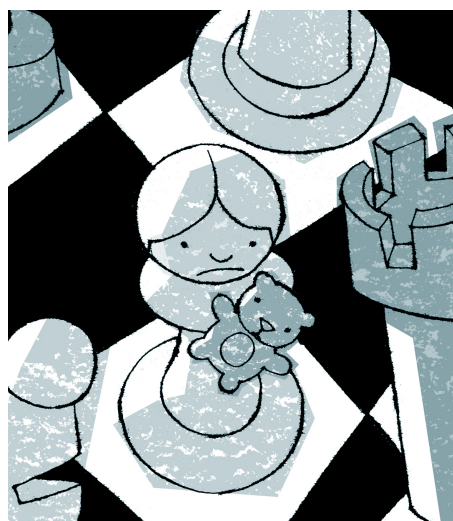
Purpose: Decisions made in family and juvenile courts include the placement of children in out-of-home care, arrangements for child custody and visitation after parents separate, and children's placement in youth or other detention centers. These decisions affect many aspects of the lives of children, including their schooling and access to educational services. Through a review of literature from the fields of social science research, education, and law, the project will help court professionals and judicial officers understand the educational system and the ways in which court decisions can influence children's opportunities for learning and development.

Project: *Parenting After Violence: What Children Need From Parents for Positive Development and Functioning*

Organization: Child Trauma Research Project, University of California at San Francisco

Investigators: Alicia Lieberman, Ph.D.; Patricia Van Horn, J.D., Ph.D.

Description: Children who have been exposed to family violence or have experienced violence may have special parenting needs. The project will garner information from the literature to aid courts in making decisions in the best interest of these children. The review will focus on the ways in which family violence affects children at various developmental stages and what children at each stage need from their relationships with parents and other caregivers to be restored to an optimal developmental trajectory. The investigators will also examine research into the effects of family violence on the par-



ents themselves and the ways in which living in a violent household affects parenting. The project will offer recommendations for parents, caregivers, teachers, attorneys, and court professionals to aid children who have been exposed to family violence.

Project: *Parenting After Violence: Strategies for Intervention*

Organization: Minnesota Center Against Violence & Abuse (MIN-CAVA), University of Minnesota–Twin Cities

Investigators: Jeffrey L. Edleson, Ph.D.; Lyungai F. Mbilinyi, M.S.W.; Sudha Shetty, J.D.

Description: This project will provide juvenile and family court personnel with research-based information to assist them in making decisions for family safety. Critical literature and empirical studies will be reviewed and interpreted in light of court decisions. The central focus of the research will be the effectiveness of the interventions courts might recommend for families. Several print and online documents will be created to present this information; they will include reviews of best practices in interventions with parents after incidents of child maltreatment and/or adult domestic violence in the home.

● For more information on these projects or on the Center for Families, Children & the Courts' Research Grant Program, contact Andrea Lash, 415-865-7557; e-mail: andrea.lash@jud.ca.gov.

Inventory of Court Facilities Nears Completion



The Task Force on Court Facilities is scheduled to complete its field visits and surveys of all the state's courts by this September, finishing an exhaustive process that started at the beginning of the year 2000.

The goals of the survey process are to determine the condition and functionality of current court facilities, identify possible improvements, and document the need for additional court structures now and in the future. The results of the individual court surveys will eventually be used to develop an overall report on the state's trial and appellate court facilities.

"Visiting every court facility in the state was a long but necessary step in the process,"

says Robert Lloyd, who is helping to oversee the task force on behalf of the Administrative Office of the Courts. "But this is just one stage in our effort to develop a comprehensive plan for court facilities around the state."

Taking the next step in that endeavor, the task force has begun submitting individualized inventory and evaluation reports to the courts for their comments. The reports document the conditions of existing facilities (based on the surveys) and present options for construction, renovation, and remodeling to meet space needs through the year 2020.

In its requests for comment from the courts on these reports, the task force asked:

- ◆ Does the report accurately detail the scope and location of court structures within the county?

- ◆ Do the facility ratings accurately reflect the condition of your buildings?

- ◆ Do the planning options in the report sufficiently address the needs of the court? Should other options be considered?

- ◆ Are there any major capital developments that are urgently needed?

RESPONSIBILITY FOR COURT FACILITIES

In addition to taking inventory of court facilities and presenting options for renovation or new

construction, the Task Force on Court Facilities is studying the question of whether the county or the state should have responsibility for these buildings. The Finance and Implementation Committee, a subcommittee of the task force, has concluded that, since the state is responsible for trial court operations, it should also be responsible for court facilities.

The committee is exploring ways to transfer the responsibility for facilities from the county to the state. At its May 31 meeting, the task force approved a set of five general principles for this transferral.

"Since the advent of state funding of the trial courts, we have been working on the matter of who should ultimately be responsible for court facilities," says Mr. Lloyd. "It is important to keep in mind that these principles are consensus issues and that the transfer of responsibility to the state is still a work in progress."

The task force's second interim statewide report, which will include its recommendations on state responsibility for court facilities as well as its options for construction and renovation of state court buildings, is due to be completed by January 1, 2001. The final report to the Governor, Legislature, and Judicial Council will be issued July 1, 2001.

● For more information, visit the task force's Web site at www2.courtinfo.ca.gov/facilities/. ■

Five General Principles Approved by the Task Force on Court Facilities

1. It is critical to expedite the transfer of responsibility for court facilities to the state.
2. The transfer of responsibility shall be accomplished through negotiations between the state, courts, and counties.
3. The state shall not hold the counties liable for deferred maintenance that existed in the base year and for the addressing of which no funds were earmarked.
4. Facilities determined to be unsuitable for court use may or may not be transferred, depending on the outcomes of negotiations between the state, courts, and counties.
5. Issues regarding occupancy of and use of space in a mixed-use building shall be agreed upon by the state, courts, and counties and shall be spelled out in a memorandum of understanding.



The Superior Court of Riverside County is just one of the 58 counties the task force visited during its surveying process. Photo: Jason Doiy

2000–2001 Drug Court Funding

ACT PROVIDES \$10 MILLION FOR DRUG COURTS

At its August 24 meeting, the Judicial Council approved guidelines for the allocation of funds to the state's drug courts via the Comprehensive Drug Court Implementation Act of 1999. The fiscal year 2000–2001 State Budget provides \$10 million for this previously unfunded act.

The Comprehensive Drug Court Implementation Act of 1999 requires that the Judicial Council and the Department of Alcohol and Drug Programs (DADP) collaborate on the design and implementation of the state drug court program. Together they must identify the act's mandated tasks and how to accomplish them.

The act, passed by the California Legislature and codified as Health and Safety Code sections 11970.1–11970.4, provides for minimum base funding for

drug courts in all counties in California, plus a per-capita allocation. The recipient "drug court systems" will include those for (1) juvenile offenders, (2) parents of children who are detained by or are dependents of the juvenile court, (3) parents of children in family law cases involving custody and visitation issues, (4) criminal offenders under Penal Code sections 1000.1–1000.5, and (5) other drug court systems approved by the Drug Court Partnership Executive Steering Committee.

The process of implementing the Comprehensive Drug Court Implementation Act is scheduled to begin in September with the release of a Request for Application (RFA) from DADP. To apply, the presiding judge and the alcohol and drug program administrator for each county must jointly develop and submit a countywide plan.

Although funding will not be allocated competitively, ap-

plications must include goals, objectives, and measures of outcomes. Any county that has multiple drug courts must address all of its drug courts in the application. DADP will provide technical assistance with application preparation to courts and counties if they need it.

DRUG COURT MINI-GRANTS AWARDED FOR 2000–2001

At its August 17 meeting, the Collaborative Justice Courts Advisory Committee selected the recipients of the drug court mini-grants for 2000–2001. Thirty-four drug court programs from 25 counties submitted applications requesting a total of \$951,757, more than double the amount available in direct funding for the courts.

The Office of Criminal Justice Planning (OCJP) has made drug court mini-grants possible for the last four years by providing funding, which is administered through the Administrative Office of the Courts. For fiscal year 2000–2001, OCJP is providing \$500,000 for California drug courts with a "family focus" that (1) encourage the development and operation of juvenile delinquency drug courts, juvenile de-

pendency drug courts, and family law drug courts; (2) target groups such as pregnant women; and (3) provide child care in drug court programs.

The committee made selections based on the broad grant eligibility criteria approved by the Judicial Council in April, which included:

- ◆ Viability of the program and its current level of financial need;

- ◆ Consistency with the California Standards of Judicial Administration and other drug court guidelines;

- ◆ Involvement of a local steering committee;

- ◆ Successful completion of statistical and financial reporting requirements for previous mini-grant funding periods (if applicable); and

- ◆ Completeness and comprehensiveness of the application.

Of the 34 drug court programs that submitted applications, 17, representing 13 counties, received grants.

● For more information, contact Sandy Claire, Administrative Office of the Courts, 415-865-7632; e-mail: sandy.claire@jud.ca.gov. ■